

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STATE OF NEW YORK and BASIL SEGGOS
As Acting Commissioner of the New York State
Department of Environmental Conservation,

Plaintiffs,

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

2:15-cv-6569 (DRH) (ARL)

- against -

PRIDE SOLVENTS & CHEMICAL CO. INC.,
PRIDE SOLVENTS & CHEMICAL CO. OF
N.Y., INC., ARTHUR DHOM, SR., ARTHUR
DHOM, JR., CHERYL DHOM, as Executor of
the Estate of ROBERT DHOM, and 78-88
LAMAR STREET REALTY CORP.

Defendants.

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PRIDE SOLVENTS & CHEMICAL CO. INC.,
PRIDE SOLVENTS & CHEMICAL CO. OF
N.Y., INC., ARTHUR DHOM, SR., ARTHUR
DHOM, JR., CHERYL DHOM, as Executor of
the Estate of ROBERT DOHM, and 78-88
LAMAR STREET REALTY CORP.,

Third-Party Plaintiffs,

- against -

KEAN BABYLON, INC., COVEND LLC, BGM
PROPERTIES, INC., PILLBOX LLC, KISMET
MANAGEMENT CORP., LORE REALTY
ASSOCIATES, LLC, LANCER REALTY
HOLDING CORP., EDISON REALTY, LLC,
KEW REALTY, JRG BROTHERS, INC., f/k/a
JFB LITHOGRAPHERS, INC., GOLD &
BROWN REALTY CORP., DILLON CONT.
CORP., NICOS POLYMERS & GRINDING,
INC., SUPER WEB PRESS SERVICE CORP.,
LANCER PACKAGING LITHOGRAPHY
CORPORATION, NASSAU TOOL WORKS,
INC. a/k/a NTW DISSOLUTION CORP.,
TOUCH OF CLASS ADVERTISING AND
GRAPHICS, INC.,

Third-Party Defendants,

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HURLEY, Senior District Judge:

Presently before the Court is the Report and Recommendation of Magistrate Judge Arlene R. Lindsay, dated July 16, 2021 (the “R&R” [DE 230]), recommending the Court sanction Third-Party Defendant Edison Realty, LLC (“Edison”) by striking its answer and by entering a default judgment against it. Judge Lindsay noted that Edison has not retained new counsel since its previous counsel withdrew on April 28, 2020, despite (i) Judge Lindsay’s April 28, 2020 warning that it could not proceed *pro se* and that a failure to obtain new counsel would result in a recommendation to strike Edison’s answer, (ii) the Defendants/Third-Party Plaintiffs’ two motions to strike on September 17, 2020 and April 14, 2021, and (iii) Judge Lindsay’s Order to Show Cause dated April 29, 2021. R&R at 1–2. That is, ever since its previous counsel withdrew, Edison has failed to take any action in this case. *Id.* Pursuant to Federal Rules of Civil Procedure 16 and 37, Judge Lindsay concluded that, given Edison’s failure to defend, “[a]ny sanction short of striking Defendant Edison’s answer . . . would be an exercise in futility.” *Id.* at 2–3. Accordingly, Judge Lindsay recommended the Court strike Edison’s answer and enter a default judgment against it.

More than fourteen (14) days have passed since service of the R&R and no objections have been filed. Pursuant to 28 U.S.C. § 636(b) and Federal Rule Civil Procedure 72, this Court has reviewed the R&R for clear error. Having found none, the Court concurs in the R&R’s reasoning and result insofar that it recommends striking Edison’s answer. The Court will not enter a default judgment at this time

because the Defendants/Third-Party Plaintiffs' damages on its claims against Edison are contingent on the outcome of the main action against Defendants/Third-Party Plaintiffs. Accordingly,

The Court hereby STRIKES Defendant Edison's Answer to the Third Party Complaint, ECF 114.

SO ORDERED.

Dated: Central Islip, New York
August 13, 2021

s/ Denis R. Hurley
Denis R. Hurley
United States District Judge